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HUMAN RIGHTS QUESTIONS: IMPLEMENTATION OF HUMAN RIGHTS INSTRUMENTS

Implications of full funding for the operation of all human rights treaty bodies

Report of the Secretary-General

1. In its resolution 45/85 of 14 December 1990, the General Assembly, inter alia, noted with interest that the meeting of persons chairing the human rights treaty bodies recommended in October 1990 that the Assembly take appropriate measures to ensure the financing of each of the committees from the United Nations regular budget (see A/45/636, annex, para. 15), and requested the Secretary-General to report on the question to the Commission on Human Rights at its forty-seventh session and to the Assembly at its forty-sixth session. In its resolution 46/111 of 17 December 1991, the General Assembly welcomed the report of the Secretary-General (A/46/650), which examined the financial, legal and other implications of providing full funding for the operation of all human rights treaty bodies, and requested the Secretary-General to submit a further report on the question to the Assembly at its forty-seventh session. The present report is submitted in response to that request.

2. As pointed out in the report of the Secretary-General (A/46/650, para. 2), the activities of five of the human rights treaty bodies (the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Group of Three) are fully funded from the regular budget of the United Nations, whereas the activities of two human rights treaty bodies (the Committee on the Elimination of Racial Discrimination and the Committee against Torture) are funded by the United Nations either partially or not at all. Accordingly, the effective functioning of those two committees depends on the timely payment by the States parties of assessments under the relevant provisions of the instruments concerned.

3. In the case of the Committee on the Elimination of Racial Discrimination, which is funded partially from the assessments of States parties pursuant to article 8, paragraph 6, of the Convention, the non-payment by a number of States of those assessments resulted in the cancellation or curtailment of the Committee's sessions in 1986, 1988, 1989 and 1990. This trend continued in 1992, a year during which the lack of sufficient funds resulted in the cancellation of the Committee's spring session and the curtailment of its summer session from three to two weeks. In the case of the Committee against Torture, which is funded entirely from assessments of States parties under article 17, paragraph 7, and article 18, paragraph 5, of the Convention, there has not been a cancellation or curtailment of the Committee's sessions as a result of insufficient funds. However, an increasing number of States parties have accumulated arrears in their assessment, creating uncertainty over the Committee's future financial stability.

4. Considering that the effective functioning of the treaty bodies established pursuant to United Nations instruments on human rights is indispensable for the full and effective functioning of such instruments, the General Assembly, in its resolution 46/111, inter alia, endorsed the recommendation made in 1990 by the meeting of persons chairing human rights treaty bodies that the Assembly should take appropriate measures to ensure the financing of each of the committees from the United Nations regular budget, and invited the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to consider, as a matter of priority, all possible measures for meeting the costs of implementing those treaties on a viable, guaranteed basis, including the amendment of the funding provisions of those treaties. Further, in its decision 46/429 of 17 December 1991, the General Assembly requested the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider, at their meeting in January 1992, the proposal of the Government of Australia to amend article 8, paragraph 6, of the Convention, concerning arrangements for meeting the expenses of members of the Committee on the Elimination of Racial Discrimination while in the performance of their duties.

5. On 15 January 1992, the 14th meeting of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination adopted without a vote an amendment proposed by Australia to replace paragraph 6 of article 8 of the Convention with a new paragraph and to add a further paragraph, as article 8, paragraph 7. The amendment as adopted is as follows:

> Article 8, paragraph 6: "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention."
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> Article 8, paragraph 7: "The members of the Committee established under the present Convention shall, with the approval of the General

Assembly, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide."

6. The meeting of States parties also recommended that the General Assembly approve the amendment at its forty-seventh session and decided that the amendment should enter into force after it had been approved by the Assembly and accepted by two thirds of the States parties, which shall have so notified the Secretary-General as depositary (see annex I).

7. Similarly, on 9 September 1992, a conference of the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, convened under article 29 of the Convention, adopted without a vote an amendment, proposed by the Government of Australia, to delete paragraph 7 of article 17 and paragraph 5 of article 18 of the Convention and to add a new paragraph, as paragraph 4 of article 18, as follows:

Article 18, paragraph 4: "The members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the General Assembly shall decide."

8. The Conference also recommended that the General Assembly take action for the implementation of the proposed amendment at its forty-seventh session and recalled that the amendment would enter into force after it had been accepted by two thirds of the States parties to the Convention, which shall have so notified the Secretary-General as depositary, and would become operative after the Assembly had taken appropriate action (see annex II).

9. If the recommendations adopted at the meetings of the States parties to the two instruments are acted upon by the General Assembly at its forty-seventh session, the Secretary-General would plan to send appropriate notifications to the States parties to the instruments. As indicated above, the amendments would not enter into force until two thirds of the States parties to each treaty had signified their acceptance to the Secretary-General. As at 1 September 1992, there were 132 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination and thus agreement would be required from 88 States parties. There were 68 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the same date and concurrence to this amendment would therefore be required from 46 States parties.

ANNEX I

Decision to amend article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination on arrangements for meeting the expenses of members of the Committee on the Elimination of Racial Discrimination while in performance of their duties

The States parties to the International Convention on the Elimination of All Forms of Racial Discrimination,

Reiterating the importance of the International Convention on the Elimination of All Forms of Racial Discrimination, which is the most widely accepted human rights convention adopted under the auspices of the United Nations, as well as the contribution of the Committee on the Elimination of Racial Discrimination to the United Nations efforts to combat racism and all other forms of discrimination based on race, colour, descent or national or ethnic origin,

Concerned that the financial arrangements for meeting the expenses of members of the Committee on the Elimination of Racial Discrimination, in conformity with article 8, paragraph 6, of the Convention, have not proved sufficient to ensure that the Committee can discharge its mandate effectively,

Recalling the decisions adopted by the eleventh, twelfth and thirteenth meetings of States Parties appealing to all States parties to meet in full their financial obligations under article 8, paragraph 6,

Recalling also the decisions of the Committee on the serious impediment to its work resulting from the financial situation, including the cancellation and shortening of meetings, a/

Noting the concern about the continuing financial problems expressed by the Chairman of the Committee in his letter of 14 November 1989, b/

Aware that the General Assembly has, in its resolutions 41/105, 42/57, 43/96, 44/68 and 45/88, expressed grave concern at the continuing deterioration of the proper functioning of the Committee as a result of interruptions to its meeting schedule and has made reiterated appeals to all States parties to fulfil their financial obligations without delay,

Noting that the General Assembly has endorsed the recommendations of the 1988 and 1990 meetings of the chairpersons of human rights treaty monitoring

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a/ CERD 1989 (XXXVII) I, 1988 (XXXVI) I, 1987 (XXXIV) II, (XXXV) I.

b/ CERD/SP/39.

bodies on the need to ensure adequate financing and adequate staffing resources for the operations of the treaty bodies, and in particular that the General Assembly in its resolution 46/111 endorsed the recommendation of the 1990 meeting of chairpersons that the General Assembly take appropriate measures to ensure the financing of each of the monitoring committees from the regular budget of the United Nations,

Taking note of the General Assembly's request in its resolutions 46/83 and 46/111 that the States parties to the Convention consider, as a matter of priority, all possibilities of establishing a more secure basis for the future financing of all the costs of the Committee, including possible amendment to the funding provisions of the treaty,

Noting the proposed amendment to article 8, paragraph 6, put forward by the Government of Australia c/ in accordance with article 23, paragraph 1, of the Convention,

Taking note of General Assembly decision 46/429 in accordance with article 23, paragraph 2, of the Convention, requesting that the current meeting of States parties consider the proposed amendment and to limit the scope of any revision of the Convention to the question of arrangements for meeting the expenses of Committee members while in performance of their duties,

1. Decide to replace paragraph 6 of article 8 of the Convention with the paragraph "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention.";

2. Also decide to add a new paragraph, as article 8, paragraph 7, "The members of the Committee established under the present Convention shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.";

3. Recommend that the General Assembly approve these amendments at its forty-seventh session;

4. Decide that the amendment shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States parties which shall have so notified the Secretary-General as depositary;

5. Urge all States parties to meet their financial obligations under the existing article 8, paragraph 6, in full until such time as the amendment in paragraph 1 above enters into force;

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c/ C.N.285.1991.TREATIES-4 of 20 December 1991.

6. Strongly appeal to all States parties in arrears in making the contributions required by the existing provisions of the Convention to meet those payments in full;

7. Emphasize that the entry into force of the amendments cannot in any way be interpreted as relinquishing the obligation of States parties to meet in full any arrears in payments of their assessed contributions.

ANNEX II

Conference of States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to review the amendment proposed by the Government of Australia to articles 17 and 18 of the Convention

The States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Reiterating the importance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the full implementation of the prohibition, under international law, of the practice of torture and other cruel, inhuman or degrading treatment or punishment,

Concerned that the financial arrangements for meeting the costs of implementation of the Convention, in conformity with paragraph 7 of article 17 and paragraph 5 of article 18 of the Convention have not proved sufficient to ensure the long-term viability of the Committee against Torture as an essential mechanism for overseeing the effective implementation of the provisions of the Convention,

Recalling the decision of the third meeting of States parties to the Convention which expressed increasing concern about the viability of the financial regime established by articles 17 and 18 of the Convention and that the prospect of a worsening accumulation of arrears in the payment of assessed contributions may have a paralysing effect on the monitoring of the Convention's implementation,

Conscious also of the concern expressed by the Chairman of the Committee against Torture about the viability of the current funding arrangements and the conclusions of the independent study on "Possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations instruments on human rights",

Taking note of the General Assembly's request that the States parties to the Convention consider, as a matter of priority, all possibilities for meeting the costs of the Convention on a viable, guaranteed basis, including by considering possible amendment to the funding provisions of the Convention,

Noting that the General Assembly has endorsed the recommendations of the 1988 and 1990 meetings of the chairpersons of human rights treaty monitoring bodies on the need to ensure adequate financing and adequate staffing resources for the operations of the treaty bodies, and in particular that the General Assembly in its resolution 46/111 endorsed the recommendation of the 1990 meeting that the General Assembly take appropriate measures to ensure the financing of each of the monitoring committees from the regular budget of the United Nations,

Noting also the proposed amendment, put forward by the Government of Australia in accordance with article 29, paragraph 1, of the Convention, to delete article 17, paragraph 7, and article 18, paragraph 5, and insert a new paragraph 4 of article 18 to read "The members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the General Assembly shall decide.",

1. Decide to delete paragraph 7 of article 17 and paragraph 5 of article 18;

2. Also decide to add a new paragraph, as paragraph 4 of article 18 to read "The members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the General Assembly shall decide.", and as a result of inserting this provision, that the existing paragraph 4 of article 18 should be renumbered as paragraph 5;

3. Recommend that the General Assembly take action for the implementation of the proposed amendment at its forty-seventh session;

4. Recall that the amendment shall enter into force when it has been accepted by two thirds of the States parties to the Convention which shall have so notified the Secretary-General as depositary, and on the understanding that the proposed amendments will become operative only when the General Assembly has taken appropriate action;

5. Urge all States parties to meet their financial obligations under the existing article 17, paragraph 7, and article 18, paragraph 5, in full until such time as the proposed amendment in paragraphs 1 and 2 above become operative;

6. Appeal strongly to all States parties in arrears in making contributions required under the existing provisions of the Convention to meet those payments in full;

7. Emphasize that the entry into force of the proposed amendment cannot in any way be interpreted as relinquishing the obligation of States parties to meet in full any arrears in payments of their assessed contributions.